IN THE SUPREME COURT OF THE STATE OF DELAWARE

ADAM R. WILSON,	§	
	§	No. 248, 2009
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0608004623
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 16, 2009
Decided: February 18, 2010

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

O R D E R

This 18th day of February 2010 upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Adam R. Wilson ("Wilson"), the defendant below, appeals from a Superior Court final judgment of conviction. Wilson pled guilty to (i) robbery in the first degree, (ii) wearing a disguise during the commission of a felony, and (iii) conspiracy in the second degree. On appeal, Wilson contends that the Superior Court erred in denying his Motions to Recuse and to Force the State to Honor its Plea Agreement. We find no error and affirm.

2. In March 2007, following a jury trial, Wilson was convicted of robbery in the first degree (two counts), wearing a disguise during the commission of a

felony (two counts), and conspiracy in the second degree (two counts). On appeal, this Court reversed the convictions and remanded the case to the Superior Court for a new trial.[1]

3. At a bail hearing held on remand, the judge—who also presided over Wilson's jury trial—told Wilson's counsel that while the facts of the case were unknown when bail was originally set, she had heard all of the evidence in the case and now had a "different perspective" in resetting bail. The judge increased Wilson's bail, but assured Wilson's counsel, in response to his protests, that she was not punishing Wilson for the reversal, and that a new trial would be held, after which Wilson "might go free."

4. The Superior Court scheduled Wilson's retrial to begin on April 7, 2009. On February 24, 2009, the prosecutor offered to Wilson's counsel a plea to one count each of robbery in the first degree and wearing a disguise in which the prosecutor would recommend 15 years Level V incarceration, suspended after the 3 years minimum mandatory sentence for the robbery charge, and 2 years Level V incarceration for the disguise charge. That letter also stated that Wilson's first trial had resulted in a 10 years minimum mandatory sentence, and that after March 15, 2009, the State would consider the plea offer revoked.

[1] *Wilson v. State*, 950 A.2d 634 (Del. 2008).

5. Wilson's counsel responded the following day. Counsel noted that Wilson's sentence following the first trial was 8 years and asked the prosecutor to reconsider his offer. The prosecutor replied on February 26, acknowledging that he had miscalculated the original sentence and therefore, offered a plea to robbery in the first degree and conspiracy in the second degree with a sentence recommendation of 3 years mandatory minimum at Level V for the robbery charge and 1 year at Level V for the conspiracy charge. The prosecutor concluded by stating that the "deadline of March 15, 2009 still applies for any acceptance of the plea regardless of any change to the trial date." A courtesy copy of that letter was sent to the trial judge.

6. Wilson's counsel responded by letter dated March 4, 2009. Counsel wrote that he had communicated the plea offer to Wilson. Counsel also expressed his concern that the prosecutor had sent a copy of his February 26 letter to the trial judge "as some sort of judge shopping and to bias the judge." Wilson's counsel advised that he "will be forced to file the appropriate motions," unless the prosecutor explained his reasons for sending a copy of his letter to the judge.

7. The next communication between counsel was on March 19, 2009, when Wilson's counsel sent the prosecutor a letter urging him to consider a plea that would allow Wilson to serve his sentence at Level IV. The prosecutor responded on March 20, informing Wilson's counsel that he understood Wilson's

failure to respond to the plea offer as a rejection of the plea. After four days, Wilson's counsel replied that he could only assume that the prosecutor agreed that sending a courtesy copy of the February 26 letter to the judge was "clearly improper, unethical and was only done as some sort of judge shopping," and that Wilson had not rejected the plea offer. On March 26, the prosecutor responded that the State was expecting trial to go forward on April 7, 2009 because no indication of acceptance of the offer by Wilson had been received as of March 26, 2009. The prosecutor added that a "plea to 5yr L5 (3 min/man) is the ONLY plea the State will extend." Two letters by Wilson's counsel, dated March 30 and April 2, 2009, concluded the correspondence between the parties. In those letters, Wilson's counsel reiterated that, in his opinion, Wilson never rejected the plea and requested that Wilson be offered the February 26 plea (*i.e.*, recommending a total of 4 years at Level V).

8. The following day, April 3, 2009, Wilson's counsel filed the two motions that are the subject of this appeal. The Motion to Recuse asked that the judge recuse herself from the case because (i) she had presided over Wilson's first trial, the outcome of which was reversed by this Court; (ii) she had made statements creating an appearance of bias at the bail hearing; and (iii) she was copied on the prosecutor's February 26 letter. Wilson's Motion to Force the State to Honor its Plea Agreement asked the Superior Court to force the State to abide by

its February 26 plea offer because it would be "unfair and unjust to punish [Wilson] for some issue the prosecutor has with" Wilson's counsel.

9. The Superior Court considered and denied both motions on April 7, 2009. Wilson then entered a plea agreement under which he pled guilty to one charge each of robbery, wearing a disguise, and conspiracy. The State entered a *nolle prosequi* on the remaining charges and recommended a six years Level V sentence.[2] The Superior Court sentenced Wilson to 15 years at Level V, suspended after 3 years, for the robbery conviction; 2 years at Level V for the disguise conviction; and 9 months at Level V for the conspiracy conviction. This appeal followed.

10. Wilson contends that the Superior Court erred in denying his two motions and asks this Court to vacate his sentence, remand his case for re-sentencing by a different judge, and require the State to honor its February 26 plea offer.

[2] The State recommended that Wilson be sentenced to 15 years Level V incarceration, suspended after 3 years (the minimum mandatory sentence) for the robbery in the first degree conviction, 2 years Level V incarceration for the wearing a disguise during the commission of a felony conviction, and one year Level V incarceration for the conspiracy in the second degree conviction.

11. "A voluntary guilty plea waives a defendant's right to challenge any errors or defects before the plea, even those of constitutional dimension."[3] Wilson does not contend that he entered the plea involuntarily.[4] Therefore, his claims of error have been waived, as they implicate alleged errors occurring before he entered the plea.

12. Appellate review of sentences is extremely limited.[5] For this Court to vacate Wilson's sentence, he must show that the Superior Court either imposed an illegal sentence or exceeded its broad discretion in sentencing.[6] No such showing was made here.[7] Even if this Court were to address Wilson's claims of error, those claims are without merit.

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[3] *Smith v. State*, 841 A.2d 308 (Table), 2004 WL 120530 at *1 (Del. Jan. 15, 2004) (citing *Tollett v. Henderson*, 411 U.S. 258, 266-67 (1973)). *See also Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003); *Downer v. State*, 543 A.2d 309, 312 (Del. 1988).

[4] Wilson argues that he decided to plead guilty due to the Superior Court's denial of his motions. However, at the plea colloquy Wilson confirmed that he was voluntarily pleading guilty.

[5] *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

[6] *Howell v. State*, 421 A.2d 892, 899 (Del. 1980).

[7] This Court's review usually ends upon determination that the sentence is within the statutory limits. *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989). Wilson's sentence did not exceed the statutory limits: robbery in the first degree is a class B felony for which up to 25 years Level V incarceration may be imposed (11 *Del. C.* § 832 and § 4205), wearing a disguise during the commission of a felony is a class E felony for which up to 5 years at Level V may be imposed (11 *Del. C.* § 1239 and § 4205), and conspiracy in the second degree is a class G felony for which the court may impose up to 2 years at Level V (11 *Del. C.* § 512 and § 4205).

13. "When confronted with a motion to recuse, the trial judge must engage in a two-step analysis to determine whether disqualification is appropriate. The first step requires the judge to be subjectively satisfied that she can proceed to hear the cause free of bias or prejudice concerning [the moving] party," and is reviewed by this Court for abuse of discretion.[8] The second step requires the judge to examine objectively whether "there is an appearance of bias sufficient to cause doubt as to the judge's impartiality," and is reviewed *de novo*.[9]

14. Wilson offers three reasons as support for his argument that the trial judge should have recused herself. First, Wilson argues that the Superior Court policy—that the original trial judge presides over the new trial after remand—is "questionable."[10] That argument has been rejected by this Court. It also has no

[8] *Jones v. State*, 940 A.2d 1, 18 (Del. 2007) (quoting *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991)) (internal quotation marks omitted).

[9] *Id.*

[10] Wilson relies on the following statement by the judge when hearing his motion for recusal: "if you think that any judge in this Court doesn't already–hasn't already formed an opinion about the guilt or innocence after sitting through an entire trial, then you must think we're real idiots." The judge, however, explained that that opinion is of no consequence because in a jury trial "the jury is the finder of fact, not the Court."

merit, especially where—as here—the judge acknowledged that there was "a good reason" for reversal.[11]

15. Second, Wilson relies on certain comments made by the judge during the bail hearing and the fact that the judge set a higher bail than was originally set. This argument fails, however, because the judge did not remember her allegedly prejudiced comments at the bail hearing and Wilson did not specify them in his motion.[12] The judge also reasonably explained her decision to increase Wilson's bail as based on facts that were unknown to the judicial officer who originally set bail.

16. Third, Wilson relies significantly on the prosecutor having sent the trial judge a courtesy copy of his February 26 letter and argues that the Superior Court should have no involvement in plea negotiations. Yet, the judge never read that letter and, therefore, her impartiality could not have been tainted by it.[13] Moreover, it was not inappropriate for the prosecutor to address a courtesy copy of

[11] *Jackson v. State*, 684 A.2d 745, 753 (Del. 1993) (finding no basis to conclude that the trial judge, who heard inadmissible evidence during the first penalty hearing, should have recused himself from further participation in the sentencing process); *Honaker v. State*, 968 A.2d 491 (Table), 2009 WL 590302 at *1 (Del. Mar. 9, 2009) (finding no basis for a claim that the Superior Court demonstrated bias and imposed a sentence "out of retaliation" for reversal).

[12] "THE COURT: … Whatever comments you're talking about, I don't even remember what they were. But you were certainly obliged to provide them for me in quotes."

[13] Wilson points out that the letter stated that Wilson "needs to accept responsibility for his actions; something he has steadfastly refused to do." Any effect this statement might have had on the trial judge would have been balanced by the fact that the State offered Wilson the lowest sentence recommendations (4 years at Level V) in that letter.

his letter to the Court. The Superior Court is often made aware of plea offers and even requires that the parties inform the Court of the status of their plea negotiations.[14]

17. To conclude, Wilson has failed to substantiate (i) that the trial judge abused her discretion in finding that she had no bias or prejudice concerning Wilson, or (ii) the existence of any objective "appearance of bias" against Wilson.

18. This Court reviews a Superior Court decision on an issue relating to the acceptance or rejection of a plea offer for abuse of discretion.[15] Wilson "has no constitutional right or other legal entitlement to a plea bargain. Rather, plea agreements are undertaken for mutual advantage and governed by contract principles."[16] Wilson failed to timely accept the State's offer, even though he knew that offer would expire on March 15, 2009. Under standard contract law principles the offer terminated before a plea *agreement* was formed. Wilson had no right to require the prosecutor to re-offer the plea after the expiration of the

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[14] *See* Superior Court New Castle County Criminal Case Management Case Plan at *4-5 (requiring the Court to routinely inquire whether substantive and realistic plea agreements were offered to defendants prior to initial case review, and requiring counsel for the parties to set forth the circumstances pertaining to any plea offer made by the State), and *8 (requiring the judge, if a case is not resolved upon final case review, to personally address the defendant in open court and advise that the plea offer that has been extended by the Attorney General is the best and final offer that will be made by the State). The prosecutor explained to the Superior Court that he had sent the copy because he treated the correspondence with Wilson's counsel as a case review.

[15] *Washington v. State*, 844 A.2d 293, 296 (Del. 2004).

[16] *Id*.

February 26 offer.[17] Because Wilson and the State did not reach a plea agreement, the Superior Court could not have abused its discretion in denying Wilson's motion to force the State to honor that non-existent agreement.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[17] *Id.*